ORDERED.

Dated: April 15, 2020

Catherine Peek McEwen
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re: Case No. 8:19-bk-03711-CPM

Frank Greer, Chapter 7

Debtor.
_____/

ORDER DENYING MOTION TO RECUSE JUDGE

Frank Greer is no stranger to this Court and no stranger to lodging complaints about bankruptcy judges whose decisions he does not like. His latest complaint is in the form of his Emergency Motion to Recuse Judge Catherine P. McWeen [sic] and Change Venue Due to Obstruction of Justice, Bribery, Justice Corruption to Defraud, Retaliation, Fraud on the Court and Under 28 U.S.C. § 455(a) Due to Lack of Impartiality (the "Motion") (Doc. No. 195).[1]

His first complaint was (allegedly) lodged against me in his first case before this Court, Case No. 8:14-bk-01710-CED.[2] In that case, in open court Mr. Greer stated that he had filed a

[1] In addition to requesting that I recuse myself as judge, the Motion requests that this case "be removed under 28 U.S.C. § 1412 to another district," and that "a report be made under 18 U.S.C. § 3057(a) of this case to U.S. Attorney General for investigation" of various parties in interest in this case. Because the Motion, therefore, violates Local Rule 9013-1(a) by combining multiple forms of relief under different provisions of law, this order makes a ruling only as to the recusal request.

[2] The docket reflects that Mr. Greer also filed for bankruptcy relief in Massachusetts in 2007 and 2013, the latter of which resulted in the entry of a chapter 7 discharge on May 1, 2013.

complaint against me with the Eleventh Circuit, meaning the Court of Appeals for the Eleventh Circuit. As a result, I disqualified myself from his case on the assumption that my "impartiality might reasonably be questioned," within the meaning of judicial disqualification statute 28 U.S.C. § 455(a), even though I am not, in fact, biased against him. However, I never did receive a copy of such complaint and, thus, do not believe one was filed. My successor judge in Mr. Greer's prior case made rulings that upset him, and he filed a complaint against that judge with the Eleventh Circuit. Upon review of Mr. Greer's allegations, the Chief Judge of the Eleventh Circuit dismissed the complaint. In this, his second case before me, I declined to disqualify myself when the case was assigned to me because I disqualified myself in the first case to avoid any appearance of impropriety based on a mistaken belief that Mr. Greer had filed a complaint against me as he stated he had done. And I will not disqualify myself from this case now, based on what appears to be a pattern of judge shopping.

The record in this case, as well as in the first case here, clearly demonstrates that Mr. Greer vehemently and vigorously disputes that a mortgage loan encumbering his homestead is held by HSBC Bank USA, National Association, as Trustee, in Trust for the Registered Holders of Ace Securities Corp. Home Equity Loan Trust, Series 2006-FM2, Asset Backed pass-Through Certificates and serviced by Select Portfolio Servicing, Inc. (collectively hereafter, the "Lender"), notwithstanding that the state trial court has entered a judgment in favor of the Lender.[3] Mr. Greer firmly believes that the Lender has committed fraud on the state court and, by filing a claim in this Court based on the judgment, has committed and is committing fraud on this Court. Mr. Greer wants this Court, in essence, to reverse the state court.[4]

[3] A copy of the final judgment appears in the record as an attachment to the Notice of Filing Exhibit A (Doc. No. 60).
[4] *See, e.g.*, Motion for Relief from Judgment/Order Pursuant to Fed.Bankr.P. [sic] 9024 (Doc. No. 81).

The records in both cases here equally clearly demonstrate that this Court will not entertain collateral attacks on the judgment. It is my consistent view that, in order to prevent forum and judge shopping and out of respect for claim and issue preclusion doctrines,[5] relief from a state court foreclosure judgment should be sought in the state court judicial system, either via a motion to vacate the judgment under the Florida Rules of Civil Procedure and/or via an appeal.[6] In fact, at the time Mr. Greer filed his current case, he had an appeal of the judgment pending before Florida's Second District Court of Appeal. And, indeed, in an effort to advance the disposition of the parties' dispute, I modified the automatic stay to permit Mr. Greer's appeal to proceed so that he could attempt to overturn the judgment.[7] That appeal is still pending. Ultimately, therefore, Mr. Greer will have his full day in court—in a court of competent jurisdiction, and that court will sort out the parties' dispute regarding ownership of the mortgage loan. The decision of the state court on appeal (or otherwise if on motion at the trial level) will inform this Court's decision on any pending contested matters to which the mortgage ownership dispute is relevant. Nonetheless, Mr. Greer disagrees with my refusal to entertain and resolve the arguments he has made or can make on appeal (or by motion at the trial level) in the state court system.

I need not disqualify myself based on Mr. Greer's latest attempt to forum shop.[8] Disqualification considerations should "reflect *not only* the need to secure public confidence

[5] *See, e.g., Brown, et al. v. R.J. Reynolds Tobacco Co.,* 611 F. 3d 1324. 1332 (11th Cir. 2010) (describing the elements of claim preclusion and issue preclusion, under which the same parties may not relitigate, respectively, causes of action or specific issues already decided between them in an earlier lawsuit).
[6] *See* Catherine Peek McEwen, *Homing in on Truths in Bankruptcy Court,* Tampa Bay Times, Dec. 14, 2012.
[7] *Hewett v. Wells Fargo Bank, N.A.*, 197 So. 3d 1105, 1106-07 (Fla. 2d DCA 2016) (notice of appeal of foreclosure judgment filed by debtor post-petition without first obtaining relief from the automatic stay was void).
[8] *United States v. Greenough,* 782 F.2d 1556, 1558 (11th Cir. 1986) (a judge assigned to a case may not give a litigant or third parties the power to "exercise a veto over the assignment of judges" by recusing himself based on "unsupported, irrational, or highly tenuous speculation" as to bias or prejudice).

through proceedings that appear impartial, *but also* the need to prevent parties from too easily obtaining the disqualification of a judge, thereby manipulating the system for strategic reasons, perhaps to obtain a judge more to their liking."[9] It is apparent that Mr. Greer attempts to use disqualification strategically when he finds himself disagreeing with my (and, in his first case here, my successor judge's) substantive rulings. Of course, a judge's adverse ruling provides no basis for disqualification.[10] The test to determine if a judge should recuse herself because her impartiality might reasonably be questioned is "whether an objective, disinterested lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality."[11] Armed with the complete record of Mr. Greer's two cases in this Court, could an objective, disinterested lay person entertain a significant doubt as to my impartiality? On the contrary, quite the opposite is true. During hearings in the two cases, I painstakingly provided Mr. Greer with a roadmap for how to achieve success in a chapter 13 case[12] through a cure-and-pay plan[13] or through our Court's highly successful mortgage modification mediation program.[14] I did this because I know he wants to keep his home, and if it turns out that he is unsuccessful in his state court appeal, then he would need to know his options for saving his home.

[9] *In re Allied -Signal, Inc.*, 891 F.2d 967, 970 (1st Cir. 1989) (emphasis in original).
[10] *U.S. v. Grinnell Corp.*, 384 U.S. 563, 583-84 (1966); *Byrne v. Nezhat*, 261 F.3d 1075, 1103 (11th Cir. 2001), *abrogated on other grounds by Douglas Asphalt Co. v. QORE, Inc.*, 657 F.3d 1146 (11th Cir. 2011).
[11] *Simmons v. Warden*, 589 F.App'x 919, 922 (11th Cir. 2014) (quoting *Parker v. Connors Steel Co.*, 855 F.2d 1510, 1524 (11th Cir. 1988)).
[12] Since then, Mr. Greer converted this case to a chapter 7 case.
[13] *See* 11 U.S.C. § 1322(b)(5).
[14] *See* Sixth Amended Administrative Order Prescribing Procedures for Mortgage Modification Mediation, Admin. Order FLMB-2019-6.

Further, I will not burden a colleague by disqualifying myself and, thereby, passing off to another judge a case that may be tough or unpleasant.[15] Some might characterize this case as both, given that Mr. Greer files voluminous and sometimes repetitive papers, sometimes comingling requests for relief, and his papers exhibit hostility to parties in interest and me. To be sure, "there is as much obligation for a judge not to [disqualify] when there is no occasion for him to do so as there is for him to do so when there is."[16]

As discussed above, Mr. Greer's dissatisfaction with me stems largely from his repeated (and repeatedly unaccepted) demands to have this Court sit as a Monday morning quarterback judging the state trial court's rulings. But because disqualification motions require a fact-specific analysis, I also address Mr. Greer's other reasons for wanting me to disqualify myself. First, he contends that I have a "powerful emotional bond" with the Lender's lawyer. This is pure fabrication. Rumor, suspicion, or innuendo do not provide a basis for disqualification.[17] The Lender's lawyer's relationship with me is solely as a member of the bar of this Court. I do not socialize with her. I do not see her outside of court or bankruptcy organizations' functions. I do not know her personal telephone number nor where she lives or who her family members are. She is not a Facebook friend of mine. Mr. Greer's assumptions about my favoring the lawyer can only be driven by the fact that some, but not all, of my rulings have benefited the Lender. Again, at bottom this contention is in the nature of a disagreement with my rulings, which disagreement provides no cause for disqualification.

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[15] *See Murray v. Scott*, 253 F.3d 1308, 1313 (11th Cir. 2001) (appreciating that "judges are often reluctant to recuse themselves and, thereby, send a tough or unpleasant case to a colleague.").
[16] *In re Moody*, 755 F.3d 891, 895 (11th Cir. 2014) (quoting *United States v. Burger*, 964 F.2d 1065, 1070 (10th Cir. 1992)).
[17] *In re Hussey*, 391 B.R. 911, 920-21 (Bankr. S.D. Fla. 2008) (citation omitted).

Mr. Greer also complains about my terminating the mortgage modification mediation process. Yet when Mr. Greer attempted to participate in mediation, he demanded to mediate with a stranger to the case, namely a predecessor to the Lender, a former mortgagee that has never entered an appearance in this case, let alone file a proof of claim. He used the same modus operandi in the first case here. This Court has no jurisdiction over that former mortgagee. Mr. Greer refused to entertain modification mediation with the Lender. Absent his agreement to mediate with the ostensible holder of the mortgage (as so found by the state trial court), there would no point to maintain the facade of a modification mediation with no other party on the other side to engage in negotiations. Settlements are voluntary, and Mr. Greer has the right not to attempt to settle his dispute with the Lender through mediation. That is fine with the Court. But he cannot turn his own refusal to mediate (and my reasonable reaction to that refusal) into a ground for my disqualification.[18]

Mr. Greer complains about a hearing at which I sternly reprimanded him for saying derogatory remarks in open court about the Lender's lawyer. It well within a judge's function to discourage such discourse and demand civility among the parties.[19] And were the tables turned and the derogatory remarks made by someone else and aimed at Mr. Greer, I would have reprimanded that person similarly.

In addition, Mr. Greer complains about my not holding a hearing prior to entering an order (Doc. No. 195) that is attached to the Motion as Exhibit 7. No hearing was necessary on the motion underlying that order, for reasons clearly explained in the body of the order. Because the

[18] *See Thomas v. Home Depot U.S.A., Inc.,* 792 F.App'x 722, 727 (11th Cir. 2019) ("Among other things, we are extremely reluctant to allow a party's own acts to trigger recusal.").

[19] Local Rule 5072-1 provides that individual judges may enforce the courtroom decorum specified in that rule, including the prohibition against making disparaging remarks toward opposing counsel, as well as any additional prohibitions or requirements with respect to proper courtroom conduct.

Bankruptcy Code permits the entry of orders without an actual "live" hearing,[20] there is nothing about the entry of the order that warrants my disqualification.

Further, Mr. Greer mentions my disqualification in his first case before this Court but misstates the reason for the disqualification. I have addressed that disqualification above. And in connection with that prior case, he complains about rulings I made concerning events related to a prior chapter 7 case that he filed in Massachusetts. The Motion pulls select facts from the record without acknowledging other facts that are necessary to an appreciation of the issues presented to the Court and how I perceived the record at the time. A complete and accurate picture of what occurred in the first case before this Court (both before and after I disqualified myself) can be found in District Judge Mary S. Scriven's appellate opinion affirming my successor judge's dismissal of the first case.[21] Mr. Greer's complaints about my rulings in the first case are, again, not a proper basis to trigger a disqualification.

Lastly, Mr. Greer complains about an adverse ruling on his motion for sanctions for violation of the automatic stay by his homeowner association and its lawyer. I found a stay violation by the lawyer and denied finding a violation of the stay by the association. And although Mr. Greer complains that I have not ruled on what sanctions to assess against the lawyer, Mr. Greer well knows that the existence and amount of his actual damages are triable issues, and a trial on those issues is scheduled. Again, adverse rulings are not a reason for me to disqualify myself.

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[20] *See Piazza v. Nueterra Healthcare Physical Therapy, LLC*, 719 F.3d 1253, 1274 n.8 (11th Cir. 2013) (applying 11 U.S.C. § 102(1)(A), under which the court notes that the phrase "after notice and hearing" means "after such notice *as is appropriate* in the particular circumstances" and "after such opportunity for hearing *as is appropriate* in the particular circumstances," to find bankruptcy court did not deny procedural due process by failing to hold a hearing) (emphasis in original).

[21] *In re Greer*, Case No. 8:15-cv-00338-MSS. A copy of Judge Scriven's opinion appears in the docket of the first case, 8:14-bk-01710-CED at Doc. No. 192. *See also* Orders at Doc. Nos. 106 and 150 entered in the first case (describing what occurred in that case).

Finally, I would be remiss if I did not mention the tenor of the Motion as manifesting a personal attack on me that may be perceived as an additional ground for disqualification. A party's hostility toward a judge should not be viewed, without more, as a basis for disqualification, "lest we encourage tactics designed to force [disqualification]."[22] "A party cannot force disqualification by attacking the judge and then claiming these attacks must have caused the judge to be biased."[23]

For the many reasons discussed above, it is accordingly

ORDERED:

1. The Motion is DENIED, and I decline to disqualify myself from this case.

2. To the extent the Motion includes requests for additional forms of relief, such requests are stricken, without prejudice, as having been improperly included in violation of Local Rule 9013-1(a).[24]

The Clerk is directed to serve a copy of this order on the Debtor.

[22] *U.S. v. Bertoli*, 40 F.3d 1384, 1414 (3d Cir. 1994).
[23] *FDIC v. Sweeney*, 136 F.3d 216, 219 (1st Cir. 1998) (citation omitted).
[24] The Court makes no ruling on these additional requests for relief. The Court notes, however, that, as to the request to change venue to another *district* based on allegations that Mr. Greer cannot receive a fair hearing due to alleged bias on my part, Local Rule 1073-1(d) provides that if a judge is unable due to disqualification to preside over a case or proceeding in a division with more than two resident judges, the Clerk shall reassign the case or proceeding to another resident judge in that *division*. As for the request to make a report to U.S. Attorney, nothing prohibits Mr. Greer from making such report himself.